THE SUPREME COURT OF OHIO

THE STATE OF OHIO,)	1982 TERM
)	
City of Columbus.)	To wit: October 13, 1982

State of Ohio,	) No. 82-1039
	) AND CROSS-MOTION
Appellee/Cross-Appellant	) MOTION/FOR AN ORDER
	) DIRECTING THE COURT OF
vs.	) APPEALS
	)
Alan Patrick,	) for SUMMIT County
	)
Appellant/Cross-Appellee	) TO CERTIFY ITS RECORD

It is ordered by the Court that this motion and cross-motion is overruled.

COSTS:

Motion Fee, $20.00, paid by James R. Willis

Motion Fee, $20.00, paid by City of Akron

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of _____ 19__

_____ Clerk

_____ Deputy

APPENDIX "A"

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,)	1982 TERM
)	
City of Columbus.)	To wit: October 13, 1982

State of Ohio,	) No. 82-1039
	) AND CROSS-APPEAL
Appellee/Cross-Appellant)	APPEAL/FROM THE COURT OF
	) APPEALS
vs.	)
	)
Alan Patrick,	) for SUMMIT County
	)
Appellant/Cross-Appellee)	

This cause, here on appeal as of right from the Court of Appeals for Summit County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Summit County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of _____ 19__

_____ Clerk

_____ Deputy

APPENDIX "B"

STATE OF OHIO) IN THE COURT OF APPEALS
)SS:
COUNTY OF SUMMIT) NINTH JUDICIAL DISTRICT

CITY OF AKRON Plaintiff-Appellee v. ALAN PATRICK Defendant-Appellant)	C.A. NO. 10428 APPEAL FROM JUDGMENT ENTERED IN THE AKRON MUNICIPAL COURT OF THE COUNTY OF SUMMIT OHIO CASE NO. 81 CRB 3295

DECISION AND JOURNAL ENTRY

Dated: June 16, 1982

This cause was heard March 2, 1982, upon the record in the trial court, including the transcript of proceedings, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

MAHONEY, P.J.

Defendant-Appellant, Alan Patrick, appeals from his conviction and sentencing for the offenses of gambling and operating a gambling house, as well as from the court's order confiscating approximately $134,000.00 which had been seized as a result of the search of Patrick's home and a safe deposit box. We affirm the convictions, but vacate the order of confiscation and remand for further proceedings as to the confisca-

APPENDIX "C"

tion.

FACTS

After over four months of police investigation into suspected gambling operations in the city of Akron, including surveillance of persons suspected by police of being involved in said operations, law enforcement officials made application for and were issued separate warrants to search the residence of Alan Patrick, among several others, for gambling paraphernalia, phones, and U.S. currency.

The affidavit for the search warrant was executed by Detective Larry Lambes of the Akron Vice Squad. The affidavit details the surveillance of eight vice squad members as they watched the trafficking of some 24 different individuals in and out of 14 different houses and commercial establishments while utilizing 17 vehicles in going from place to place. The affidavit describes the frequency of the 24 named individuals at the various places and in the presence of and association with each other. Three of these persons were known to have been convicted of various gambling-related offenses. The officers found physical evidence such as slips and records with numbers, names and initials indicative of a "numbers type" gambling operation in the abandoned trash of six of the houses. Some of the same names and initials were found in the trash at different locations.

The 31 page affidavit containing 109 items with numerous sub-items, chronicles and logs the travels and brief

stops during various weekday afternoons of many of the persons named frequently in the affidavit.

Police officers executed the warrant on April 24, 1981. Upon entering the home, police observed two home computers, the screen of one of which showed the words: "Advanced, Declined, Unchanged." Recognizing that these terms signified a numbers game based upon daily stock quotations, the officers summoned a police computer expert to the Patrick residence who confirmed that the computers were being utilized in a gambling operation. The computers and various "diskettes" containing gambling data and programs were seized as gambling paraphernalia.

During the course of the search, police officers discovered a large locked safe. In response to demands that he open the safe, Patrick requested permission to call an attorney. This request was denied. Patrick finally opened the safe after police threatened to remove the safe from the premises. The contents of the safe, including $12,000 in cash and a key to a safety deposit box were seized.

Primarily on the basis of the key found in the safe, a second warrant was issued to the police for a search of the safety deposit box. This search revealed that the box, registered in the name of Patrick's mother-in-law, contained approximately $122,000.00 in cash, which was also seized.

Patrick's pre-trial motion to suppress the evidence on the basis of the

illegality of the searches and seizures was overruled, and the case proceeded to a bench trial.

A large portion of the state's evidence was supplied by a computer expert who explained the data contained in the computers. Patrick was found guilty of gambling and operating a gambling house in violation of R.C. 2915.02 (A) (2) and R.C. 2915.03 (A) (2), respectively.

By a separate entry and without further hearing, the trial court ordered the confiscation of the $134,000.00, ostensibly pursuant to R.C. 2933.41 (C).

ASSIGNMENT OF ERROR I

> "The court erred in determining that the search warrant affidavit set forth probable cause to believe that a search of the appellant's home would disclose the various items the seizure of which was authorized thereby, and in concluding that the search made of, and the seizures made from, the home here involved were, in fact, reasonable."

At the outset, we recognize that it is not necessary to make a prima facie showing of criminal activity in order to establish probable cause to search. An affidavit for a search warrant need only establish the probability that certain enumerated items will be found in the place sought to be searched. Beck v. Ohio (1964), 379 U.S. 89, 96. The issuing magistrate is allowed broad discretion

to make this determination of probable cause, and once made, courts of review ordinarily afford a great deal of deference to such a finding. Jones v. United States (1960), 362 U.S. 257, 270-271; Aguilar v. Texas (1964), 378 U.S. 108,111.

Although a search warrant which has been issued in total or partial reliance upon information obtained from an informant will be viewed more critically by a court of review in evaluating whether probable cause has been demonstrated, we nevertheless conclude that the affidavit in the instant case is sufficient to support a determination of probable cause to search the home of Alan Patrick for evidence of gambling offenses.

The affidavit recites that police surveillance of two houses commenced with suspicious complaints by private individuals to the vice squad. From there we view an ever-widening circle, encompassing more and more houses and more and more individuals in a pattern which common sense and experience tells any police officer or independent magistrate that this is a "numbers or policy" type gambling operation. The physical evidence found in the trash bags, the frequency of association with each other, the times of day involved, the exchange of small brown bags, the patterns of brief stops, as if making pick-ups and deliveries, as well as the late afternoon congregating at one or more locations, when lumped together lead to that reasonable inference. The affidavit also has eye-witness information from one police officer who observed an exchange of money and overheard conversations in the barber shop of Marion Dixon

and the pool-room of Joe Tolliver which clearly shows the involvement of each place in a numbers-type gambling operation. Those commercial places at 36 and 38 N. Howard Street were leased by Dixon and Tolliver. Both have had recent convictions for keeping a gambling house.

Patrick argues, however, that there is nothing to tie him to the operation except for an informant's statement and the appearance of Charles Roberson at his home on four occasions over a ten day period.

The informant's statement contained in the affidavit is that:

> "***'the biggest numbers' man in Akron is Alan Patrick.' He received some of his bets through Ruby Calhoun. Alan Patrick is known to be living on the west side and also owns the red brick apartments at Fourth and Chittenden Streets, Akron, Ohio."

The affiant confirmed Patrick's residence and ownership of the apartments. The affiant also says: "This information source has proved to be reliable previously."

Patrick argues that the informant's statement was an unsupported conclusion which does not meet the two-pronged Aguilar-Spinelli Test. In Aguilar the court said:

> "***.
>
> "Although an affidavit may be based on hearsay information and

need not reflect the direct personal observations of the affiant,***the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed,***was 'credible' or his information 'reliable.' ***."

Aguilar v. Texas, supra, at pg.114.

Patrick argues that the issuing magistrate was not apprised of any underlying circumstances from which the informant gained his information and from which the officer concluded the informant was reliable.

We hold that the second prong is met by the affiant's knowledge that the informant had been previously reliable. State v. Karr (1975), 44 Ohio St. 2d 163. The first prong of the test, however, must fail unless it can be found to be corroborated by other independent sources. In Spinelli the Supreme Court said:

"***.

"The informer's report must first be measured against Aguilar's standards so that its probative value can be assessed. If the tip is found inadequate under Aguilar, the other allegations which corroborate the information

> contained in the hearsay report should then be considered. At this stage as well, however, the standards enunciated in Aguilar must inform the magistrate's decision. He must ask: Can it fairly be said that the tip, even when certain parts of it have been corroborated by independent sources, is as trustworthy as a tip which would pass Aguilar's tests without independent corroboration?***."

Spinelli v. United States (1969), 393 U.S. 410 at 415. We do not believe it is necessary to that corroboration for the police to establish that Patrick was the "biggest numbers man" in Akron. We only believe it necessary to corroborate that it was probable that he was involved and that gambling paraphernalia would probably be found at his residence.

Patrick is linked to the probable numbers-type gambling operation by Roberson. The affidavit chronicles Roberson's activities between March 4 and April 3 showing him to be frequenting the places and associating with the persons described in the affidavit as engaged in the "numbers" scheme. The inference that there is a numbers ring in operation is reasonable when the conduct of the various named persons is analyzed. All of them are intertwined. Roberson's documented trips to and from Patrick's house does not mean that those days named were the only days he went to Patrick's. The inference must be made that the surveilling officers were observing an established pattern as part

of the ring. We are only dealing in probabilities and not certainty. As Justice Goldberg said in United States v. Ventresca (1965), 380 U.S. 102, 108:

> "***.
>
> "These decisions reflect the recognition that the Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract. If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a common-sense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting."
>
> "***."

The logical probability is that Patrick was likewise engaged in criminal activity with Roberson and the others and that it was probable that gambling paraphernalia might be found in his house.

Defendant next alleges that the search warrant was deficient, in that with respect to the warrant's direction to seize "U.S. Currency," the warrant failed to comport with the constitutional requirement of specificity and particularity.

In support thereof, defendant argues that the search warrant empowered the executing officers to seize all U.S. currency, no matter how small the denominations or insignificant the sum.

Although the police expected to find large sums of currency, i.e., sums in excess of $100,000, an exact amount was impossible to specify or accurately determine. Moreover, it si quite well settled that a technical violation is a search warrant does not invalidate the seizure of items that would have been otherwise validly seized had the warrant been more specific.

In the instant case, police seized the sums of $600 and $12,000 and $122,000. The $600 taken from Mrs. Patrick's purse was subsequently returned to her.

Patrick also alleges that the computers and the computer "diskettes" were improperly seized, in that the computers and diskettes were not specifically named in the search warrant. Patrick claims that items not specifically named in a warrant may not be seized unless the "plain view" doctrine is applicable. Under that doctrine, an item not named in the warrant is subject ot seizure if it is found in "plain view;" its discovery by police officers was inadvertent;

and the incriminating nature of the item is immediately apparent to the police officers executing the warrant. Patrick argues that the latter requirement was not met by the computers and the diskettes. We disagree.

The search warrant authorized the seizure of phones, U.S. currency and gambling paraphernalia. One of the executing officers, Officer Alexander testified that when first discovered, one of the computer screens showed the words "Advanced, Declined, Unchanged." Based on his experience and knowledge of the numbers games, he immediately deduced that the computers were being used in the gambling operation; therefore, the computers were seized as gambling paraphernalia pursuant to the search warrant.

Finally, contrary to defendant's assertion, we cannot find that under the circumstances the search of Patrick's house was unreasonable.

ASSIGNMENT OF ERROR III

> "There is insufficient evidence as a matter of law to support the guilty verdicts in this case."

As stated in State v. Eley (1978), 56 Ohio St. 2d 169:

> "A reviewing court will not reverse a jury verdict where there is substantial evidence upon which a jury could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt."

Applying this principle to the facts of the case at bar, we conclude that there is ample evidence to sustain the judgment of conviction for the violations of R.C. 2915.03 (A) (2), i.e., permitting his residence to be used for gambling, and R.C. 2915.02 (A) (2), that being the specific offense of gambling.

It is undeniably true that the home computers owned by Patrick and found in the residence owned and inhabited by Alan Patrick were used as part of a gambling operation. The reasonable and logical inference is that Alan Patrick also controlled the operations of these computers.

ASSIGNMENT OF ERROR II

> "The court erred in ordering certain property forfeited and in failing to order the return of such property to the defendant."

Although not specifically named in the trial court's order, it is clear that the court was acting pursuant to R.C. 2933.41 which provides, in pertinent part:

> "(A) Property that has been lost, abandoned, stolen, or lawfully seized or forfeited, and that is in the custody of a law enforcement agency shall be safely kept pending the time it is no longer needed as evidence, and shall be disposed of pursuant to this section.
>
> "***.
>
> "(C) A person loses any right he may have to possession of property:

"(1) That was the subject, or was used in conspiracy or attempt to commit, or in the commission, of an offense other than a traffic offense, and such person is a conspirator, accomplice, or offender with respect to the offense;

"(2) When, in light of the nature of the property or the circumstances of such person, it is unlawful for him to acquire or possess it.

"(D) Unclaimed and forfeited property in the custody of a law enforcement agency, shall be disposed of on application to and order of any court of record that has territorial jurisdiction over the political subdivision in which the law enforcement agency has jurisdiction to engage in law enforcement activities, ***."

In light of the holding in the recent case of State v. Lilliock (1982), 70 Ohio St. 2d 23, construing the above quoted statutory provisions, we reverse and vacate the trial court's order of confiscation and remand the cause for further consideration.

SUMMARY

Accordingly, the judgments of conviction are affirmed. The order of confiscation is vacated and the cause remanded for further proceedings on the confiscation as provided by law.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the Akron Municipal Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22 (E).

Costs taxed to appellant.

Exceptions.

Presiding Judge
- for the Court -

VICTOR, J.
QUILLIN, J.
CONCUR

APPEARANCES:

SAUNDRA ROBINSON, City Prosecuting Attorney, 53 E. Center St., Akron, OH 44308 for Plaintiff.

JAMES R. WILLIS, Attorney at Law, Suite 1609, Bond Court Bldg. 1300 E. Ninth St., Cleveland, OH 44114 for Defendant.

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

CITY OF AKRON	)	CASE NO. 81 CRB 3295
	)	
Plaintiff	)	JUDGE MURPHY
	)	
v.	)	FINDING AND JUDGMENT
	)	
ALAN PATRICK	)	
	)	
Defendant	)	

This cause came on to be heard before this Court commencing on the 22nd day of September, 1981. The defendant, Alan Patrick, having waived a trial by jury and consenting to the Court hearing the evidence on the affidavits presented, to-wit:

Count #1: Ohio Revised Code 2915.02 (A) (2) that the defendant, Alan Patrick on or about the 24th day of April, 1981, did establish, promote, operate or knowingly engage in conduct which facilitates any scheme or game of chance conducted for profit.

Count #2: Ohio Revised Code 2915.03 (A) (2) that on or about the 24th day of April, 1981, the defendant, Alan Patrick, being the owner and lessee or person having custody, control or supervision of premises known as 978 Wooster Avenue, Akron, Ohio, did recklessly permit such premises to be used or occupied for gambling in violation of Section 2915.02 of the Revised Code.

The defendant also having been charged with a violation of Section 2913.51 of the Ohio Revised Code, to-wit: receiving stolen property, and the prosecutor moving to dismiss said charge, the Court hereby grants same and said affidavit is

dismissed as against this defendant.

FINDING OF FACT

This Court has considered all of the evidence presented to it, both direct and circumstantial, and makes the following findings of fact in reference thereto.

1. On the 1st day of April, 1981, the defendant, Alan Patrick, while accompanied by one Charles Roberson, another defendant, made certain trips throughout the City of Akron, Ohio engaging in a series of stops at private residences and business establishments for periods of two or three minutes to fifteen or twenty minutes. The testimony of the Akron Police Department's surveillance teams indicated a certain route which was repeated by Mr. Roberson alone on April 2nd and thereafter until approximately three days before the arrest and execution of a search warrant on April 24, 1981, and in each case stopping at the residence of Irene Weary, 548 Douglas Street, Akron, Ohio and ending at the house owned and occupied by the defendant, Alan Patrick, 978 Wooster Avenue, Akron, Ohio. (See record for testimony of Officer William R. Smith, Arthur C. Hill, and Randall A. Barath.)

2. On the 24th day of April, 1981, the said Charles Roberson was arrested and from his vehicle came State's Exhibit "T" which appeared to be the historic pad with three-digit numbers written thereon.

3. On the 24th day of April, 1981, a certain search warrant was executed by the Akron Police Department, having probable cause to believe a numbers operation, i.e. an illegal scheme or game of chance was being operated in the City of Akron, Ohio. This warrant was for the premises of 978 Wooster Avenue for illegal gambling para-

phenalia, U.S. currency and records of said gambling operation.

While on the premises, Detective George Alexander saw certain computers, one of which was introduced in evidence and marked Exhibit "U", turned on and with the code on the screen called "Advances-Declines-Unchanged". Being familiar with what is called a "numbers operation" he testified he did not touch the set for fear of losing any information in its data banks or memory. Immediately, another Akron police officer, Joseph Carron, was called to the scene, being an expert in the use of said computers (See the record for his testimony.) After Officer Carron had examined the equipment and given direction to the computer to reveal its contents, see printouts marked as exhibits, he was in the position to give an opinion that the memory banks of said computer along with certain diskettes seized by the police, contained programs referred to in evidence as HB-1, HB Scan, ADD-1 and notably, HISTIT as Exhibit "K" known as the file on the CR. His was "All of the programs and the information contained on the diskettes taken together show a "computerized numbers operation'."

They reveal a system of placing bets in this computer, having been programmed to calculate a 30 and 10 percent profit for the writer and collector of bets, and an analysis of where the bets came from, whether any of the numbers were the "hit" for that day and the payoffs to the various bettors which had to be returned to the collector of the bets.

4. The above information alone would not reveal the total operation had it not been for the testimony of one Irene Weary of 548 Douglas Street, one of the stops consistently made daily by Charles Roberson and with this defendant on

the 1st day of April, 1981 (See paragraph 1).

The testimony she offered indicated that she was a "collector" of bets and her name appears as Irene, Account Number 7, on Exhibit "K". It is further noted that on the day in question, November 24, 1981, she bet number 128. That testimony is corroborated by State's Exhibit "M" wherein the recapitulation of the day's bets of Account Number 7 (previously referred to as Irene 7 on Exhibit "K") shows a bet of number 128 boxed, as she indicates meaning playing in house 1, 2, and 3, which houses or combination of bets was described by Officer Carron as the numbers operation used in the Akron area.

The collection of cash, distribution to the bettors, writers and collectors, is further corroborated by those individuals described by Irene Weary as "Bob" and "Ted" who arrived at her premises at 2:50 or 3:00 p.m., which matches the times testified to by the officers on the surveillance teams who had to be none other than Charles Roberson and Alan Patrick. However, she did not know their proper names.

The trail is clear.

5. The large amounts of cash, both in the safe at the defendant's home and taken from a certain safe deposit box under search warrant with a key from the defendant's home further support the prosecution's contention of a large-scale "numbers operation".

CONCLUSION OF LAW

It is incumbent on the courts to become as sophisticated as the criminal with their use of tools and tactics borrowed from the business community. This gambling above described was aided and enhanced by the use of computers freely

available these days to anyone. They are also simple enough in their operation so with little or no training one can program various activities, both legal and non-legal, for their own use. It only makes the job of law enforcement more difficult, time consuming and expensive as was evidenced in this case.

This was not the historic observation of the passing of money and the writing of certain numbers on small white pads. It involved a large-scale operation assisted by modern accounting methods. However, this is no less of a crime. It is inescapable that the defendant, Alan Patrick, was guilty of the crimes alleged in both affidavits by his operating this scheme of chance and also the use of his premises, recklessly permitting it to be used for gambling. The evidence presented is sufficient to convince this Court beyond a reasonable doubt, and I so find the defendant guilty of both counts.

The defendant is hereby ORDERED to appear for sentencing at 8:30 a.m. on October 22, 1981, before this Court.

James E. Murphy
Judge

cc: Nancy Kelley, Assistant City Prosecutor
James R. Willis, Attorney for Defendant

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

CITY OF AKRON	)	CASE NO. 81 CRB 3295
	)	
Plaintiff	)	JUDGE MURPHY
	)	
v.	)	JUDGMENT ORDER
	)	
ALAN PATRICK	)	
	)	
Defendant	)	

This cause came on to be heard before this Court upon evidence being adduced at a hearing May 27, 1981, upon the record and filings presented in the within case.

This Court specifically finds that the search warrant denominated Defendant's Exhibit 2 was issued upon probable cause supported by an affidavit for search warrant denominated State's Exhibit A. It is inescapable that the many months of investigation by the Akron Police Department focused on the property of the defendant known as 978 Wooster Avenue, Akron, Ohio, and that there was cause to believe that gambling paraphenalia, phones and U.S. currency as evidence the crimes set forth in the affidavit accompanying said warrant would be located at that address. As such, the search cannot be deemed "unreasonable" and as violative of the Ohio or United States Constitution in that regard.

Further, the defendant complains that certain computers taken under the authority of said search warrant were "different property" and not listed on said warrant. From the evidence these computers may have been used to determine the outcome of the gambling activity complained of as was demonstrated from the evidence. "Gambling paraphenalia" should not be construed so as to frus-

trate the purposes of law enforcement in this modern day and age. One normally thinks of gambling paraphenalia as dice, cards, roulette wheels, etc. However, as the criminal becomes more sophisticated in the application of new techniques so ought the officers engaged in law enforcement, as they view these activities in their modern context. A computer which records either the records of gambling or a determination of the results of a "numbers" operation such as was done here must be considered in that context. The evidence presented shows that Sandra Patrick at the time of the search was engaged in the use of one of the computers and certain "numbers" were visible on the screen. The officers were not unreasonable in calling in during the search another officer conversant with the use of these machines and then supplying a "printout" which merely recorded the numbers being visualized on said screen. The Court rules that that was done during the search of the premises and was reasonable in light of the facts presented. An article to be subject to seizure in the carrying out of a lawful search must have played a significant role in the commission of the crime alleged. See United States v. Stern, et al, 225 F. Supp. 187 (U.S.D.C.)

The next major thrust of the defendant's argument is that of the safe deposit box key, number 1749, taken in the search under the initial search warrant designated Defendant's Exhibit 1. This key was seized and the officers returned and drew a new affidavit for search warrant and were granted a search warrant to search said "safety deposit box number '1749' at the Transohio/Akron Savings & Loan Company." Justification for this seizure and subsequent search was based upon the evidence that a gambling operation alleged by the police of this magnitude would result in currency in the amount of approximately $100,000. Further, this safe deposit box key was found next to currency in the approximate sum of $12,000. A most

reasonable and logical deduction would be any other funds, evidence or fruits of a crime might be in that safe deposit box. Accordingly, the officers obtained the second search warrant filed in this case April 27, 1981, supported by new affidavit which incorporated the old affidavit by reference. This procedure was specifically endorsed, as is demonstrated in United States of America v. Manufacturers National Bank of Detroit, et al., 536 F.2d 699 (1976).

It is interesting to note that the wife of the defendant was the only entrant into said safe deposit box as evidenced by the records furnished and presented by the prosecution, as denominated in State's Exhibit C. How frustrating it would be to law enforcement if a criminal could place the evidence or fruits of a crime in another's name and escape merely by that device.

Since there is no showing that the jewelry confiscated by the police in Defendant's Exhibit 3 was obtained by the commission of a crime or the fruits of a crime and for the further reason that jewelry was not specified in the warrant, they bear no reasonable relationship to the purpose of the search. See United States v. Russo, 250 F. Supp. 55 and United States v. Stern, 225 F. Supp. 187.

Finally, as to the motion to suppress or to return evidence filed by Minnie Gooden, the Court finds that under a reading of the Criminal Rule 12 (F) that it states:

> Where a motion to suppress tangible evidence is granted, the court upon request of the defendant shall order the property returned to the defendant.

Since Minnie Gooden is not a party to this action nor a defendant, she has no standing to complain about the seizure of evidence. Her remedy lies in civil law, and the Court hereby overrules that motion.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion to suppress as filed by the defendant and the motion to return filed by one Minnie Gooden is hereby overruled.

James E. Murphy
Judge

cc: Ms. Nancy Kelley, Assistant City Prosecutor
Mr. John A. Dailey and Mr. James R. Willis, Attorneys for Defendant

CONSTITUTIONAL AND STATUTORY PROVISIONS WHICH THE CASE INVOLVES

Constitutional Amendments:

AMENDMENT IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

AMENDMENT VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

AMENDMENT XIV

"***No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX "F"

Ohio Revised Code:

2915.02 (A) (2) Gambling

(A) No person shall:

. . .

(2) Establish, promote, or operate, or knowingly engage in conduct which facilitates any scheme or game of chance conducted for profit;

. . .

(D) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender has previously been convicted of any gambling offense, gambling is a felony of the fourth degree.

2915.03 Operating a gambling house

(A) No person, being the owner or lessee, or having custody, control, or supervision of premises, shall:

. . .

(2) Recklessly permit such premises to be used or occupied for gambling in violation of section 2915.02 of the Revised Code.

(B) Whoever violates this section is guilty of operating a gambling house, a misdemeanor of the first degree. If the offender has previously been convicted of a gambling offense, operating a gambling house is a felony of the fourth degree